

IN THE UNITED STATES FEDERAL DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

IN RE: THE FINANCIAL OVERSIGHT
MANAGEMENT BOARD FOR
PUERTO RICO

as representative of THE
COMMONWEALTH OF PUERTO
RICO

DEBTOR

CASE NO. 17-BK- 3283-LTS

TITLE III

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U.S. DISTRICT COURT
SAN JUAN, P.R.

MOTION REQUESTING TO VACATE JUDGMENT (DOCKET 600) FOR FRAUD
UPON THE COURT AND OTHER RELIEFS

Comes Now, JAVIER MANDRY-MERCADO, pro se, and co-owner of the lands object to the state case mentioned in Docket 305, hereby declares and requests this Court to: 1) Vacate judgment (Docket 600) derived from motions (Docket 305 and 557) and order to file new ones with the correct notice of appearance; 2) Grant reasonable lawyer costs for this motion.; 3) Grant third-party standing regarding other relevant state claim; 4) Grant leave to file a cross-claim regarding the fraudulent debt and other federal reliefs; 5) To issue a fine to Counsel Vicens-Rivera for her intentional misrepresentation of important material facts from this Court regarding the parties to the claim.

AFFIDAVIT OF JAVIER MANDRY-MERCADO

Javier Mandry-Mercado, duly sworn states:

1. My name is Javier Mandry-Mercado. I am over 18 years of age and reside in Ponce, Puerto Rico. I am fully competent to I am fully competent to make this affidavit and have personal knowledge of the facts stated in this affidavit. To my knowledge, all the facts stated are true and correct.

2. The undersigned declarant is defendant in the state claim, case JAC2008-0853, referenced in Docket 305 which is inverse condemnation claim, case which contains a judgment which makes the state a debtor.
3. On 7/5/2017, after I found out about this case on Google search by chance, I sent Counsel Vicens-Rivera an email to her email of record, granting her 24 hours to reply with a cause as to why I was not informed with and an explanation, informing that I would report her to the Federal Bar and the State Bar. She did not reply within the timeframe granted to allow for a benefit of the doubt.
4. The existence of this federal proceeding was concealed from me.
5. Counsel recognized this declarant as an indispensable party to the state claim, which I am. See: Docket 305, Footnotes 1 and 3.
6. My name and percentage share of ownership was excluded from Exhibit A, and the sum of the percentages, avoiding the evident that the sum does not equal one-hundred-percent ownership.
7. The undersigned declarant is co-owner of 3.10% aliquot share of a hereditary mass¹, and together the co-owners listed in Exhibit A, we own 100% the two lots of land, that were correctly described in Docket 305 ¶3.
8. Per the notice of appearance, Docket 304, said counsel represented the members “Succession Pastor Mandry” as an Estate. [this gives a false idea that it is an estate is in probate, or that it has not been adjudicated, or even that it is a legal entity, which it is neither.] Pastor Mandry-Nones was my uncle who passed approximately on 1998. I know for a fact that his estate was adjudicated and recorded at the Registrar.

¹ The hereditary mass was created on 1976, where the undersigned, along with thirteen family members (cousins, brothers, parents, grandparents) inherited from my great-grandparents' and their respective last wills and testaments, from a case regarding dissolution of a partnership of lands belonging to my great-great-grandfather, Mario Mercado Montalvo, a sugar cane industrialist of the early 20th Century. At time of dissolution, the heirs that inherited all the land decided on agreement to divide the lands per the wills of the heirs of Mario Mercado, who did not leave a will.

9. Counsel stated falsely that the members hired her. I am a member (co-owner) but I did not hire her. [This misrepresents “members” as “all”, when truthfully could be “some” or even “most,” but definitely not “all.”]
10. The only estate that is currently on probate is the one belonging to my late father, Salvador Mandry, which is shown in Exhibit A [Docket 305], and listed as Sucn. Salvador Eduardo Mandry-Nones 20.90% share. [“Sucn” is short for “Estate” in English] I am heir of the Sucn. Salvador Mandry per his will.
11. Despite being an indispensable party to the state claim, the parties (plaintiffs of state claim) have moved the court to disqualify me as litigant, and violate my Faretta rights, to be able to manipulate without opposition the proceedings, resulting in a judicial categorical taking which violates legislative intention.
12. The manipulation of the state inverse condemnation claim consists of various acts, but among the most important was to move the court to avoid using the definitions of the law (Law 227-2008)², which as referenced to the parent law (Law 150-1988)³, requires that a natural reserve to be declared as such by the Planning Board, not the Court. Also, the lawyers stipulated a material fact that was a conclusion of law that stated that it was not necessary for the Planning Board to review the case because it was categorical. Because of this, the entire case was resolved in a summary judgment motion, depriving me of my right to interrogate the witnesses, and considered part of due process for a claim of this kind. Other methods were also used such as improper use of opinion evidence as if it were an expert witness and improper use of summary judgment and judicial notice.
13. Despite having informed the state judge, he seemed unmoved which is alarming, so I suspect that the fraud involves high-ranking officials at the Department of Justice of Puerto Rico and the Head of Permits of Municipality of Ponce, among others.

² ANNEX 1

³ ANNEX 2

14. This declarant has information about another case which was used to improperly provide judicial notice, to further the categorical taking, is believed to also have been tainted with the same fraudulent misrepresentation that the first case was categorical. (neighboring property case JAC2010-0574) Although this petitioner is not a party to the '0574' claim, which should invalidate it as well. However, I would need to be conferred third-party standing for simple discovery, in benefit of the Plaintiff of the instant claim, especially for the lack of transparency that this matter infers. The before-mentioned case is the list of debt⁴ of the Department of Natural Resources of PR as eleven million dollars.

15. Some of the issues described herein were included in case 16-cv-2229 which is currently on appeal to the First Circuit court, case 17-1230, including issues regarding the inverse condemnation claim for a violation of the Takings Clause, Due Process and others. However, it is now relevant issue regarding the debt, which includes as defendant the counsel for the Commonwealth of PR as working in conspiracy with the plaintiffs of the inverse condemnation claim, JAC2008-0853.

I, Javier Mandry-Mercado, hereby declares under penalty of perjury under the laws of the United States of America all the prior declarations are true.

Sworn Declaration Executed on: July 11, 2017

JAVIER MANDRY-MERCADO

⁴ ANNEX 3

BRIEF DISCUSSION

My standing on the matter arises from the fact that I am indispensable party to the state claim. Because of this, I am also an indispensable party of the relief requested in Docket 305. A hereditary mass, although like an Estate, has been adjudicated, but cannot be represented as a legal entity per the laws of Puerto Rico; All the individuals were necessarily required to be joined for this Court to have issued a judgment. The occurrence was not a mistake, but the contrary, a type of manipulation that it commonly done to me, and reason why I have already filed a claim against the opposing party in federal court. Counsel was supposed to list all the property owners, individually, in the form of appearance. Not doing so means that were never joined, causing the Court to issue a judgment against a fictitious party. Unfortunately, this was done to represent me without my knowledge and that of this Court, all by means of manipulation of judicial procedure, evidence and due process; For reasons like the one in the instant case, I have been forced to self-represent myself to prevent it, although my background is in engineering and business.

In terms of the relief provided, in the merits, I object to granting relief from the automatic stay because to allow the case to continue in state court violates my property rights, so I wish to request an alternate remedy which not only defends the Commonwealth's interests, but also my own. This, because the case was subject to manipulation that did not allow a temporary taking to be considered, and the eight years of moratoria are already over this year. This means that once resolved the bad judgment, a declaratory relief would be needed to resolve the judicial mishap. The Ponce Court determined that the entire two lots should be declared a categorical taking. An extension of this 8-year timeframe is in deprivation of my property rights as owner, per state law. Because the state inverse condemnation claim is in deprivation of my property rights, federal law requires that were due process rights are a requisite. The judge, because I did

not hire an attorney, moved by the other party, placed me in a quasi-default status pursuant to Rule 9.4, and anything I file the Court declares moot, including the fraud issue. I seek redress and “asylum” at this Court to resolve the issue of fraud, which is also an important state interest because it exacerbates the debt; Also, to issue a declaratory relief that the remaining be released of the effect of the legislation. Although the opposing party does not mind accruing interest on fifty million dollars⁵, I do not agree that all the land should be taken because the Planning Board never finished the boundary delimitation, and the state case rendered moot their task. In this petitioner’s rough estimation, the true just compensation should not exceed five million dollars, in total. The surface area required by the legislation was minimal. However, the temporary taking of planned developments of the Department of Natural Resources that did not mature should be compensated as temporary takings, not categorical.

This litigant is a defendant in said case, which would have allowed me to remove the case to federal court in an issue of concurrent jurisdiction to review a judgment for extrinsic fraud, and was planning to do so. However, in light that there is a judgment regarding fraudulent debt, there is relevance to the instant case allowing to file the cross-claim that this court may prefer could be suggested to be resolved as a bifurcated case, since it would include direct constitutional torts.


In my opinion, there are other people, non-property owners who are unknown to me as to who they are, who have developed a property right over the fraudulent debt, despite that per my understanding it would defraud the People of Puerto Rico by forcing the Commonwealth of PR to acquire something which neither the agency can afford, nor can it be declared that the legislative intention was satisfied. This petitioner contends that

⁵ This is approximately what they are appraising the land is worth, and the reason why they wanted to have the case removed from automatic stay. There was a hearing about the increase in valuation soon.

attempting review the case with a cause of action of fraud in state court would be futile with the “wolves”, considering the dollar-amount and the vested interests that I do not care for. I have other plans for my land than to benefit corruption by mere silence⁶, which would make me an accessory to fraud.

Wherefore, this hereby requests this Court: 1) Vacate judgment (Docket 600) derived from motions (Docket 305 and 557) and order to file new ones with the correct notice of appearance; 2) Grant reasonable lawyer costs for this motion.; 3) Grant third-party standing regarding other relevant state claim; 4) Grant leave to file a cross-claim regarding the fraudulent debt and other federal reliefs; 5) To issue a fine to Counsel Vicens-Rivera for her intentional misrepresentation of important material facts from this Court regarding the parties to the claim.

Dated: July 11, 2017



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Plaintiff

⁶ I have been witness to quite a few judicial actions that defy all laws of logic. Supervision of the Courts is essential.

